



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,227	11/03/2003	Mark Fitchmun	FIT.003.P	5270
26990	7590	05/05/2006	EXAMINER	
DAVID B. WALLER & ASSOCIATES 5677 OBERLIN DRIVE SUITE 214 SAN DIEGO, CA 92121			CARTAGENA, MELVIN A	
		ART UNIT	PAPER NUMBER	3754

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/701,227	FITCHMUN, MARK	
	Examiner	Art Unit	
	Melvin A. Cartagena	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-43 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-43 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 November 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 22 and 36 are objected to because of the following informalities:

Claim 22 recites the words "at least two" twice in line 6.

Claim 36 recites the limitation "the top" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-21 and 36-43 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,736,694 to Lebensfeld.

Lebensfeld shows a pressure actuated bubble blowing toy as seen in Figs. 2 and 3, having a flexible vessel 10 formed by bottom and side walls and defining an internal cavity as seen in the Figs. and having at least one aperture at the end of neck 14, means for dispensing or channel 34 connected to the aperture on the vessel, an exterior reservoir 20 provided on top of vessel 10, the vessel 10 is deformable by hand to cause liquid soap 12 to flow into the exterior reservoir through an spigot 30 and a bubble wand 26.

4. Claims 22-27, 29-32, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,418,843 to Jackman.

Jackman shows a squeeze-bottle dispenser as seen in Fig. 1, having a flexible cylindrical wall and bottom defining a vessel 1 with an internal cavity with two apertures 12 and 3, dispensing means or nozzle 7 connected to aperture 3 by a channel 2, an external reservoir 6 located on top of the vessel and retaining a quantity of liquid and having dimensions able to receive a bubble wand.

With respect to the container intended to be used to hold liquid soap, see MPEP 2115: “Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, “[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.” In re Young, 75 F.2d *>996<, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)).

Moreover, by the doctrine of dependent claim differentiation, liquid soap cannot be part of the combination of claims 22 and 31 because the liquid soap is explicitly recited in the dependent claims 29, 30, 34 and 35.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 28, 29, 30, 33, 34 and 35 rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,418,843 to Jackman in view of US 3,736,694 to Lebensfeld.

Jackman shows all claimed features as discussed above except for the dispenser container a bubble wand and liquid soap. Lebensfeld shows a bubble blowing toy containing liquid soap and a bubble wand. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use the device of Jackman to hold a bubble wand and liquid soap for easy and convenient refiling of the reservoir with bubble forming liquid as taught by Lebensfeld.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Corning shows a container for toilet bowl cleaning. Thai shows a bubble generating assembly. Bennett shows a hygienic water receptacle. Wright shows a mouthwash dispenser. Hein shows bubble blowing device.

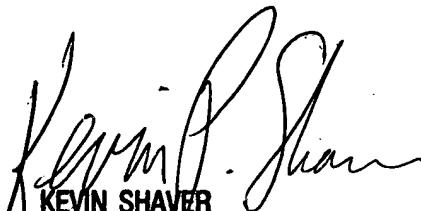
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30-6:00)

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MAC 4/27/06

MAC


KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700